No. 403

Supreme Court of the United States

OCTOBER TERM, 1956

HENRY RAGONTON RABANG, *Petitioner.*

vs.

JOHN P. BOYD, District Director, Immigration and Naturalization Service, *Respondent.*

PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE NINTH CIRCUIT

JOHN CAUGHLAN,
Counsel for Petitioner.

702 Lowman Building,
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Petitioner prays that a writ of certiorari issue to review the judgment of the United States Court of Appeals for the Ninth Circuit, entered in the above case on June 14, 1956.

CITATION TO OPINION BELOW

The District Court filed no written opinion in this case. The opinion of the Court of Appeals (R. 110-112) set forth in Appendix B. below, pp. 19-21, is reported in ..... F.2d .....

JURISDICTION

The judgment of the Court of Appeals was entered on June 14, 1956 (R. 113). No petition for rehearing was filed. The jurisdiction of this court is invoked under 28 U.S.C. §1254(1).

QUESTIONS PRESENTED

1. Whether a Filipino who was born a national of the United States and who has resided continuously in the United States since 1930 is subject to deportation for conviction of an offense involving narcotics although he has never entered the United States as an alien?

2. Whether a Filipino who has resided continuously in the United States since 1930 lost his United States nationality by reasons of the acts relating to the independence of the Commonwealth of the Philippine Islands so as to be deportable as an alien?

STATUTES INVOLVED

The statutory provisions involved are 46 Stat. 1171, Ch. 244, as amended by 54 Stat. 673 (former 8 U.S.C. §156(a)), 39 Stat. 889 (former 8 U.S.C. §155—section 19 of the Act of Feb. 5, 1917) relating to the deportation of aliens convicted of offenses involving narcotics, and certain provision of the Philippine Independence Act, and an amendment, 48 Stat. 456 and 53 Stat. 1226. They are printed in Appendix A, below, pp. 13-18.

STATEMENT

Petitioner was born a United States national in the Philippine Islands in 1910, and has resided in the United States continuously since he came here January 24, 1930 (R. 5, 111). On February 12, 1951, he was convicted of an offense involving narcotics, a violation of 26 U.S.C., §2554(a), received a six-month sentence which was suspended and was placed on three years' probation (R. 58). Having fulfilled the terms of his probation he has since been duly discharged from it (R. 6, 7).

On March 21, 1951, petitioner was arrested on a warrant charging that he was an alien who had been convicted of a violation of law involving narcotics and hence was deportable under the Act of February 18, 1931, as amended, former 8 U.S.C. §156(a) (R. 6, 49). On October 26, 1951, the Acting Assistant Commissioner ordered petitioner deported on the above stated charge. The decision was affirmed by the Board of Immigration Appeals on February 6, 1952 (R. 17). Thereafter, on March 1, 1955, "in view of the decision of the United States Supreme Court in the case of *Barber v. Gonzales*," 347 U.S. 637, the Acting Regional Commissioner moved the Board of Immigration Appeals to reopen the case for reconsideration "with a view of terminating the proceedings or for such other action as it deems appropriate" (R. 21, 22). On April 7, 1955, the Board of Immigration Appeals decided that *Barber v. Gonzales* was inapplicable to the instant case, since the act under which petitioner's deportation had been ordered "does not set up entry as an alien as an essential element to deportability," but only "requires . . . that the person sought to be deported be an alien and that he . . . have been convicted for violation of any law regulating traffic in narcotics" (R. 17, 18, 19).

Thereupon petitioner filed in the District Court a petition for habeas corpus, for declaratory relief and for review of administrative proceedings, invoking jurisdiction under 28 U.S.C., §§2241, 2201 and 2202, and 5 U.S.C., §1009 (R. 4-10). Petitioner alleged that he was not deportable because he was a national rather than an alien, having never by any voluntary act relinquished his nationality, and that, having made no entry

into the United States he was not subject to deportation (R. 8). The District Court dismissed the petition after making Findings of Fact and Conclusions of Law that petitioner was at all material times an alien subject to deportation under the statute (R. 100-102).

Jurisdiction of the Court of Appeals was invoked under 28 U.S.C. §§2191 and 2253. That court affirmed the District Court on the authority of *Cabebe v. Acheson* (C.A. 9, 1950) 183 F.2d 795; *Mangaoang v. Boyd* (C.A. 9, 1953) 205 F.2d 553, and *Gonzales v. Barber* (C.A. 9, 1953) 207 F.2d 398 (R. 111, 112).

REASONS FOR GRANTING THE WRIT

I.

The petitioner here, as in *Barber v. Gonzales*, 347 U.S. 637, never made entry into the United States. He was born a national of the United States in the Philippine Islands, came here as a national and, as such, owed permanent allegiance to the United States. In *Barber v. Gonzales, supra*, the court held that under a statute which made an alien deportable who was more than twice convicted of any crime involving moral turpitude *committed at any time after entry*, a Filipino commencing his residence in the United States prior to the Philippine Independence Act could not be deported since he made no entry.

Although the words "after entry" are not used in the Act of February 18, 1931 (former 8 U.S.C. §156 (a)), Appendix A 1, p. 13, below: that act. by its terms was made dependent upon section 19 of the Act of February 5, 1917 (former 8 U.S.C. §155); Appendix A 2, p. 14, below. This section enumerates various classes of

deportable aliens, describing some in terms of entry, *e.g.*, "within five years after entry," "at any time after entry," "prior to entry," "within three years after entry," whereas other classes, such as prostitutes or persons dealing with prostitutes, persons convicted of unlawful importation of alien, and of other offenses under the act, are defined without reference to entry. The enumeration of these specific classes is followed, however, by general provisions applicable to all classes. The general portion of the statute includes the following proviso: "That the provisions of this section, with the exceptions hereinbefore noted, shall be applicable to the classes of aliens therein mentioned *irrespective of the time of their entry into the United States*" (emphasis added). If this language is incorporated by reference into the 1931 Act, it would appear that the decision of this case below is in direct conflict with *Barber v. Gonzales*, 347 U.S. 637.

The court below did not consider in its opinion in this case the relationship of the general language of section 19 of the Act of February 5, 1917, to the Act of February 18, 1931, although it had done so many years previously in *Dang Nam v. Bryan* (C.C.A. 9, 1934) 74 F.2d 379, holding that the proviso immediately preceding the one just quoted in the same section, excepting from deportation those sentenced for crime when the judge recommends against deportation, applied to the 1931 Act because of the dependency of that act upon section 19.[1] The court below, disregarding the fact that

[1] In *United States ex rel. De Luca v. O'Rourke* (C.A. 8, 1954) 213 F.2d 759, the court also reached the conclusion that section 19 (former 8 U.S.C. sec. 155) applied to the 1931 Act (former 8 U.S.C. sec. 156(a)). To the same effect see *Ex parte Robles-Rubio* (N.D., Cal. S.D., 1954)

section 19(a) was before the court in this case, by reference in the 1931 Act, as a different part of the same section had been in *Barber v. Gonzales*, held that "entry" was not "directly or impliedly a prerequisite to deportation" of petitioner. The result reached appears to be such a plain departure from the precedent established in the *Barber* case as to require correction by this court.

II.

The decision below should be reviewed even assuming that the statutes involved do not require entry as a precondition to deportation under their terms. While this court has never explicitly decided that "entry" in the sense of the arrival of an alien from some foreign port or place is a necessary precondition of deportation independent of statutory language, such a conclusion seems to be necessarily implicit in the decisions of the court.

For, while it has been broadly asserted that the power to exclude or expel aliens is inherent in national sovereignty, *Harisiades v. Shaughnessy*, 342 U.S. 580, 587, 588, this power has never been regarded as any more than a logical and necessary corollary of the power to exclude in the first instance. *Ekiu v. United States*, 142 U.S. 651, 659. "Entry" is thus more than a term of art in a statute. It is a description of the process of passing the "formidable exclusion barriers," from which the *implied power* to expel arises. Thus,

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119 F.Sup. 610; cf. *Ex parte Eng* (N.D., Cal., S.D., 1948) 77 F.Sup. 74; *contra United States ex rel. Maggi v. Wixon* (S.D., N.Y., 1931) 53 F.2d 475.

when "there . . . [is] in legal contemplation no entry, there . . . [can] be no exclusion." *Alcantra v. Boyd* (C.A. 9, 1955) 222 F.2d 445; *Carmichael v. Delaney* (C.A. 9, 1948) 170 F.2d 239, 243, cf. *Delgadillo v. Carmichael*, 322 U.S. 388.

It has never been suggested by this court that the inherent power based upon sovereignty extended beyond foreign relations, and commerce and intercourse with foreign powers, and their subjects (aliens). Thus this court in *Harisiades* noted that the "policy toward aliens is vitally and intricately interwoven with contemporaneous policies in regard to the conduct of foreign relations, the war power and the maintenance of republican form of government. Such matters are so exclusively entrusted to the political branches of government as to be largely immune from judicial inquiry or interference." At the same time the court noted at page 585 that the alien there involved had "perpetuated a dual status as an American inhabitant but foreign citizen" entitled to "claim protection against our government" and retaining "immunities from burdens which the citizen must shoulder," including "certain dispensations from conscription from any military service." The situation here is entirely different. No such dual status is involved. On the contrary the petitioner by law owed allegiance to the United States. *Barber v. Gonzales*, 347 U.S. 637, *Gonzales v. Williams*, 192 U.S. 1.

The decision below that one who has never entered the United States as an alien coming from a foreign port or place may nevertheless be deported is a concept so novel and sweeping, and seemingly so contrary

to the whole concept of the power to deport enunciated by this court as well as by the Congress itself[2] as to require careful scrutiny and review. Not only may such power vitally affect the approximately 40,000 Filipinos of foreign birth residing in this country, it has implications affecting the rights of American-born citizens. For, if the Congress has the power to expel nationals, now declared by congressional fiat to be aliens, may not the same power be used for the expulsion of native-born citizens involuntarily denaturalized for political or other offenses and thus subject to the perils of banishment and exile?

III.

A second and equally important reason for a review of the decision below is that the court's judgment is based upon a determination that petitioner is presently an alien despite the fact that he commenced his residence in the United States as national and has never voluntarily done anything to give up that nationality and allegiance to this country.[3] The determination of whether Filipino nationals who came to this country prior to the Philippine Independence Act of 1934, 48

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[2] "The power of Congress to control immigration stems from the sovereign authority of the United States as a nation and from the constitutional power of Congress to regulate commerce with foreign nations. Every sovereign nation has power, inherent in sovereignty and essential to self-preservation, to forbid entrance of foreigners within its dominions, or to *admit them* only in such cases and *upon such conditions as it may see fit to prescribe*. Congress may exclude aliens altogether or *prescribe terms and conditions upon which they come into or remain* in this country." (House Report No. 1513, March 13, 1952, p. 5. Emphasis supplied.)

[3] On the contrary, petitioner has always expressed his intention of becoming an American citizen (R. 5, 55) and has always claimed American nationality.

Stat. 456, are now aliens importantly affects the status of from 23,000 to 35,000 resident Filipinos.[4]

The important question of the national status of Filipinos who came to the United States as nationals and have continuously resided here since has never been determined by this court, although the contentions here advanced were recently before the court. *Barber v. Gonzales*, 347 U.S. 637, 643.[5] This court should resolve this important question and remove from question the national status of resident Filipinos. The court below rested its decision in this case on the earlier case of *Cabebe v. Acheson* (C.A. 9, 1950) 183 F.2d 795, where the Philippine Independence Act of 1934 was considered in an action brought to determine nationality. The court noted that "the question is not directly answered (but, as we think, it was inferentially answered). . . .

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[4] The United States census of population, 1950, special report P-E No. 3-B "Non-white population by race," Table 6, lists the total Filipino population in the United States as 61,636. Table 30 of this same report gives the following figures with respect to foreign-born Filipino population:

Total foreign-born	39,295
Naturalized	15,389
Alien	15,908
Citizenship not reported	7,998

Since quota immigration from the Philippine Islands has been limited to total of 1,600 from 1935 to 1951, it is assumed that all but a few thousand of the total foreign-born Filipino population commenced residence in this country as nationals prior to 1935. Even the status of naturalized Filipino citizens is affected by the decision below in that under the decision below a Filipino who is denaturalized, could be subjected to deportation for acts occurring or status acquired while a citizen. Cf *Eichenlaub v. Shaughnessy*, 338 U.S. 521.

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[5] In footnote 4 to the opinion the court stated: "The respondent also attacks the validity of the deportation order on the grounds: (1) that he made no 'entry' because he was not an alien when he came to this country . . . (3) that he is not an alien today because Congress lacked the power to deprive him of his status as a national. Our disposition of the case makes it unnecessary to consider these contentions."

There is no special reference of inclusion or exclusion in any of these acts to Filipinos who were no longer residing in the Islands at the date of their independence." Loss of nationality, however, should not be predicated upon implication or inference, but only upon unmistakable language accompanied by a voluntary act of the person asserted to have lost his nationality. Cf. *Perkins v. Elg*, 307 U.S. 325, 334, *Savorgnan v. United States*, 338 U.S. 491, 497, 498; *McKenzie v. Hare*, 239 U.S. 299. It may be questioned whether Congress has the power by fiat to declare a loss of nationality with respect to resident nationals. Cf. *United States v. Wong Kim Ark*, 169 U.S. 649, 703.

Petitioner's national status is closely akin to that of citizenship, but is distinct from the status of an alien who is "one born out of the jurisdiction of the United States and who has not been naturalized under their constitution and laws." *Low Wah Suey v. Backus*, 225 U.S. 460, 473.

Petitioner was born a national, and has owed no dual allegiance or nationality. *Toyota v. United States*, 268 U.S. 402, *Gonzales v. Williams*, 192 U.S. 1. Nationality cannot be equated with alienage, and therefore should not be subject to forfeiture or impairment without some voluntary act of expatriation or renunciation.

In *Perkins v. Elg*, 307 U.S. 325, 337, this court held that abrogation of the right to elect nationality must be based upon explicit language of a statute and that rights of citizenship should not be "destroyed by an ambiguity."

Certainly the same considerations should apply to loss of nationality, and even assuming that congressional power to decree resident nationals aliens, the exercise of such power, being in effect a declaration of forfeiture, should never be presumed. On the contrary a doubtful statute should be construed to avoid such results, *Washington Pub. Co. v. Pearson*, 306 U.S. 30, 41; *United States v. One Ford Coach*, 307 U.S. 219, 226; *Knickerbocker Life v. Norton*, 96 U.S. 234, 242, especially where, as in this case, the construction given the statute by the court below results not only in a forfeiture of nationality, but also in "the equivalent of banishment or exile." *Fong Haw Tan v. Phelan*, 333 U.S. 6, 10. In view of the importance of the question involved,[6] the drastic consequences of the conclusions of the court below, this court should call for a review by certiorari.

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[6] The present case is one of two recent cases in which determination of the alienage of a Filipino born a United States national has resulted in affirmance of a deportation order. See *Resureccion-Talavera v. Barber* (C.A. 9, 1956) 231 F.2d 524 (decided March 28, 1916). This case was not cited by the court in its decision below. In *Cabebe v. Acheson*, 183 F.2d 795, no question of deportation was involved. It should also be noted that Section 8 of the Independence Act of 1934, 48 Stat. 462, placed residence in Hawaii on an entirely different basis from residence in the continental United States, in that a Filipino could enter Hawaii without restriction after 1934, but could only enter the United States as a quota immigrant. In *Mangaoang v. Boyd* (C.A. 9, 1953) 205 F.2d 553, cert. den. 346 U.S. 876, and in *Gonzales v. Barber*, 207 F.2d 398, the lower court's opinion that persons born in the Philippine Islands and entering the United States prior to the Philippine Independence Act are no longer United States nationals, was not a necessary part of the decision which rested in both instances upon the conclusion that the persons sought to be deported had not made the "entry" required by the pertinent statute.

CONCLUSION

For the foregoing reasons this petition for a writ of certiorari should be granted.

Respectfully submitted,

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APPENDIX A

1.

Act of February 18, 1931 (P.L. 683), 46 Stat. 1171, Ch. 224:

AN ACT to Provide for the Deportation of Aliens Convicted and Sentenced for Violation of Any Law Regulating Traffic in Narcotics.

Be It Enacted by the Senate and House of Representatives in Congress assembled, That any alien (except an addict who is not a dealer in, or peddler of, any of the narcotic drugs mentioned in this Act) who, after the enactment of this Act shall be convicted and sentenced for violation or conspiracy to violate any statute of the United States taxing, prohibiting, or regulating the manufacture, production, compounding, transportation, sale, exchange, dispensing, giving away, importation, or exportation of opium, coca leaves, heroin, or any salt, derivative, or preparation of opium or coca leaves, shall be taken into custody and deported in the manner provided in sections 19 and 20 of the Act of February 5, 1917, entitled "An Act to regulate the immigration of aliens to, and the residence of aliens in, the United States.

Sec. 21 of the Act of June 28, 1940, 54 Stat. 673, amending the foregoing:

Sec. 21. The Act entitled "An Act to provide for the deportation of aliens convicted and sentenced for violation of any law regulating traffic in narcotics," approved February 18, 1931, is amended—

(1) By striking out the words "and sentenced";

(2) By inserting after the words "any statute of the United States" the following "or of any

state, territory, possession, or of the District of Columbia"; and

(3) By inserting after the word "heroin" a comma and the word "marihuana."

2.

Act of February 5, 1917, section 19, 39 Stat. 889:

Sec. 19. That at any time within five years after entry, any alien who at the time of entry was a member of one or more of the classes excluded by law; any alien who shall have entered or who shall be found in the United States in violation of this Act, or in violation of any other law of the United States; any alien who at any time after entry shall be found advocating or teaching the unlawful destruction of property, or advocating or teaching anarchy, or the overthrow by force or violence of the Government of the United States, or of all forms of law or the assassination of public officials; any alien who within five years after entry becomes a public charge from causes not affirmatively shown to have risen subsequently to landing; except as hereinafter provided any alien who is hereafter sentenced to imprisonment for a term of one year or more because of conviction in this country of a crime involving moral turpitude; committed within five years after entry of the alien to the United States, or who is hereafter sentenced more than once to such a term of imprisonment because of conviction in this country of any crime involving moral turpitude, committed at any time after entry; any alien who shall be found an inmate of or connected with the management of a house of prostitution, or practicing prostitution after such alien shall have entered the United States or who shall receive, share in or derive bene-

fit from any part of the earnings of any prostitute; any alien who manages or who is employed by, in or in connection with any house of prostitution or music or dance hall or other place of amusement or resort habitually frequented by prostitutes, or where prostitutes gather, or who in any way assists any prostitute or protects or promises to protect from arrest any prostitute; any alien who shall import or attempt to import any person for the purpose of prostitution or for any other immoral purpose; any alien who after being excluded and deported or arrested and deported as a prostitute or as a procurer or as having been connected with the business of prostitution or importation for prostitution or other immoral purposes in any of the ways hereinbefore specified, shall return to and enter the United States; any alien convicted and imprisoned for a violation of any of the provisions of section 4 hereof; any alien who was convicted, or who admits conviction, prior to entry, of a felony or other crime or misdemeanor involving moral turpitude; at any time within three years after entry, any alien who shall have entered the United States by water at any time or place other than as designated by immigration officials, or by land at any place other than one designated as a port for entry for aliens by the Commissioner General of Immigration, or at any time not designated by immigration officials, or who enters without inspection, shall, upon the warrant of the Secretary of Labor, be taken into custody and deported: *Provided*, That the marriage to an American citizen of a female of the sexually immoral classes, the exclusion or deportation of which is prescribed by the Act shall not invest such female with United States citizenship if the marriage of such female

shall be solemnized after her arrest or after the commission of acts which make her liable to deportation under this Act: *Provided further,* That the provisions of this section respecting the deportation of aliens convicted of a crime involving moral turpitude shall not apply to one who has been pardoned, nor shall deportation be made or directed if the court, or judge thereof, sentencing such alien for such crime shall, at the time of imposing judgment or passing sentence or within thirty days thereafter, due notice having first been given to the representatives of the State, make a recommendation to the Secretary of Labor that such alien shall not be deported in pursuance of this Act; nor shall any alien convicted as aforesaid be deported until after the termination of his imprisonment: *Provided further,* that the provisions of this section, with the exceptions hereinbefore noted, shall be applicable to the classes of aliens therein mentioned irrespective of the time of their entry into the United States: *Provided further,* that the provisions of this section shall also apply to the cases of aliens who come to the mainland of the United States from the insular possessions thereof: *Provided further,* that any person who shall be arrested under the provisions of this section, on the ground that he has entered or been found in the United States in violation of any other law thereof which imposes on such person the burden of proving his right to enter or remain and who shall fail to establish the existence of the right claimed, shall be deported to the place specified in such other law. In every other case where any person is ordered deported from the United States under the provisions of this act or of any law or treaty, the decision of the Secretary of Labor shall be final.

The Philippine Independence Act of March 24, 1934, 48 Stat. 456, 48 U.S.C.A. §1231 *et seq.*

CHARACTER OF CONSTITUTION—MANDATORY PROVISIONS:

Sec. 2(a). The constitution formulated and drafted shall be Republican in form, shall contain a bill of rights, and shall, either as a part thereof or in an ordinance appended thereto, contain provisions to the effect that, pending the final and complete withdrawal of the sovereignty of the United States over the Philippine Islands—

(1) All citizens of the Philippine Islands shall owe allegiance to the United States.

* * *

RELATIONS WITH THE UNITED STATES PENDING COMPLETE INDEPENDENCE:

Sec. 8(a). Effective upon the acceptance of this Act by concurrent resolution of the Philippine Legislature or by a convention called for that purpose, as provided in Section 17.

(1) For the purposes of the Immigration Act of 1917, the Immigration Act of 1924 (except section 13(c)), this section, and all other laws of the United States, relating to the immigration, exclusion, or expulsion of aliens, citizens of the Philippine Islands who are not citizens of the United States shall be considered as if they were aliens. For such purposes the Philippine Islands shall be considered as a separate country and shall have for each fiscal year a quota of fifty * * *.

* * *

IMMIGRATION AFTER INDEPENDENCE:

Sec. 14. Upon the final and complete withdrawal of American sovereignty over the Philippine Islands the

immigration laws of the United States * * * shall apply to persons who were born in the Philippine Islands to the same extent as in the case of other foreign countries.

4.

Act of August 7, 1939, 53 Stat. 1226, amending the Philippine Independence Act of 1934.

* * * Sec. 2—Sec. 8 of the said Act of March 24, 1934, is hereby amended by adding thereto a new subsection as follows:

> (d) Pending the final and complete withdrawal of the sovereignty of the United States over the Philippine Islands, except as otherwise provided by this Act, citizens and corporations of the Philippines shall enjoy in the United States all of the rights and privileges which they respectively shall have enjoyed therein under the laws of the United States in force at the time of the inauguration of the Government of the Commonwealth of the Philippine Islands.

APPENDIX B

OPINION OF THE COURT BELOW

Before: POPE and CHAMBERS, Circuit Judges, and BOLDT, District Judge

BOLDT, District Judge

The only issue in this habeas corpus proceeding are whether appellant is an alien within the meaning of 46 Stat. 1171, as amended,[1] and if so whether appellant, having entered and remained in the United States as a national, is deportable under the Act.

Appellant was born in the Philippine Islands in 1910 and has continually resided in the United States since his arrival as a national in 1930. He never has been and is not now a citizen of the United States.

On February 12, 1951, in the District Court for the Western District of Washington, appellant was convicted on a guilty plea of the crime of selling and giving away narcotic drugs in violation of 26 U.S.C.A. 2554 (a).[2] A penitentiary sentence was suspended and appellant was placed on probation for three years.

[1] The Act of February 18, 1931, chapter 224, 46 Stat. 1171, as amended by Section 21, Chapter 439, Title II, Act of June 28, 1940, 54 Stat. 673, former 8 U.S.C. 156(a) provides:

"Any alien (except an addict who is not a dealer in, or peddler of, any of the narcotic drugs mentioned in this act) who, after the enactment of this act, shall be convicted for violation of or conspiracy to violate any statute of the United States . . . taxing, prohibiting, or regulating the manufacture, production, compounding, transportation, sale, exchange, dispensing, giving away, importation, or exportation of opium, coca leaves, heroin, marihuana, . . . shall be taken into custody and deported. . . ."

[2] "It shall be unlawful for any person to sell, barter, exchange, or give away any of the drugs mentioned in section 2550(a) except in pursuance of a written order of the person to whom such article is sold, bartered, exchanged, or given, on a form to be issued in blank for that purpose by the Secretary." 26 U.S.C.A. 2554(a).

On February 27, 1951, the Immigration and Naturalization Service instituted proceedings at Seattle for deportation of appellant under the act referred to on the ground that after the effective date of the act appellant had been convicted of violation of 26 U.S.C.A. 2554(a), a "law regulating traffic in narcotics." On October 26, 1951, appellant was ordered deported and subsequent appeal from such order was dismissed by the Board of Immigration Appeals. Thereafter an appeal to this court from the deportation order was dismissed for lack of prosecution. Appellant's petition for writ of habeas corpus, show cause, and declaratory judgment filed May 25, 1955, after hearing was denied by order of the district court and this appeal is from that order.

Appellant specifies error by the district court: (1) in finding that appellant now is an alien; (2) in determining that appellant, who came to the United States in the first instance as a national and did not "enter" as an alien, lawfully can be deported; and (3) in holding that a national of the United States can be divested of such status without a voluntary act of denationalization by such individual and solely from the fact that complete independence from the United States has been granted to persons residing in the territory in which the national was born.

In *Cabebe v. Acheson*, 183 F.2d 795 (1950) this court held that "the United States government intended the the status of Filipinos, regardless of domicile or place of residence at the date of Philippine independence, to be entirely separate from any phase of adherence to the United States. . . . We hold that Cabebe is . . . an alien." Under varying circumstances the same prin-

ciple was reaffirmed in *Mangaoang v. Boyd*, 205 F.2d 553 (1953) and again in *Gonzales v. Barber*, 207 F.2d 398 (1953), affirmed on other grounds in 347 U.S. 637.[3] In these decisions, to which we now adhere, this court has declined to follow the contentions of appellant in the present case.

The particular statute supporting the order here in question by its terms is applicable to "any alien." It does not directly or impliedly make "entry" a prerequisite to deportation as do the statutes involved in the Mangaoang and Gonzales cases. The rationale of the cited cases is contrary to petitioner's contention that the power to deport is based on the power to exclude and can only be applied to those who at the time of entry might lawfully have been excluded.

The order of the district court is affirmed.

(Endorsed:) Opinion. Filed, Jun. 14, 1956,
Paul P. O'Brien, Clerk.

[3] Gonzales, like Rabang, entered continental United States as a national and not as an alien. He was held to be an alien by reason of the Philippine Independence Act of 1934, 48 Stat. 456, but not subject to deportation under Section 19 of the Immigration Act of 1917 under which entry as an alien is a prerequisite to deportation. In affirming the judgment the Supreme Court did not discuss the question now presented.